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**DSL-BQA-01-046**

**TO:** Hospitals

HOSP 20

**FROM:** Jane Walters, Chief  
Health Services Section

cc: Susan Schroeder, Director  
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<p style="text-align: center;"><b>Clarification: CMS Hospital Condition of Participation: Patients' Rights "One Hour Rule"</b></p>
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On August 2, 1999, a new federal regulation, Condition of Participation: Patients' Rights, became effective for all hospitals participating in the Medicare program. This regulation, found in the Code of Federal Regulations at 42 CFR 482.13, is now available, together with the Interpretive Guidelines, at the website:

<http://www.hcfa.gov/quality/4b2.htm>

The Bureau of Quality Assurance (BQA) notified hospitals of this regulation and of the State's interpretation of how the regulation is affected by State law, Wisconsin State Statutes, Section 51.61 (1) (i), in a memo issued October 15, 1999, DSL-BQA-063.

BQA's interpretation of the regulations applying to restraint for acute medical and surgical care remains as previously issued. At 42 CFR 482.13(e), under the standard for restraint for acute medical and surgical care, the regulation refers to "other licensed independent practitioner permitted by the State and hospital to order a restraint." In Wisconsin, the only independent practitioner besides a physician who may be credentialed by a hospital to order restraints for acute medical and surgical care is an Advanced Practice Nurse Prescriber, that is, an advanced practice nurse who has been granted a certificate to issue prescription orders under Wisconsin State Statutes, Section 441.16(2).

At 42 CFR 482.13(f)(3)(ii)(C), under the standard for seclusion and restraint for behavior management, the regulation permits seclusion or restraint only "in accordance with the order of a physician or other licensed independent practitioner permitted by the State and hospital to order seclusion or restraint." In Wisconsin, only certain physicians may order restraints for persons receiving inpatient hospital services for mental illness, developmental disabilities, alcoholism or drug dependency. Only certain physicians and licensed psychologists may order seclusion. Under Wisconsin State Statutes, Section 51.61(1)(i):

The treatment director shall specifically designate physicians who are authorized to order isolation or restraint, and shall specifically designate licensed psychologists who are authorized to order isolation. In the instance where the treatment director is not a physician, the medical director shall make the designation.

At 42 CFR 482.13(f)(3)(ii)(C), the standard for seclusion and restraint for behavior management requires that "[a] physician or other licensed independent practitioner must see and evaluate the need for restraint or seclusion within one hour after the initiation of this intervention." Guidance from CMS includes the following information:

For the purpose of this rule, a LIP is any practitioner permitted by both law and the hospital as having the authority under his/her license to independently order restraints, seclusion or medications for patients. This provision is not to be construed to limit the authority of a doctor of medicine or osteopathy to delegate tasks to other qualified healthcare personnel (i.e., Physician Assistants and Nurse Practitioners) to the extent recognized under State law or a State's regulatory mechanism.

In Wisconsin, the hospital may develop policies and procedures permitting the physician to delegate the task of performing the one hour evaluation to Physician Assistants and to Advanced Practice Nurse Prescribers (APNPs). State law permits nurse prescribers to "issue prescription order" for certain "devices...[I]ntended to affect the structure or function of the body of persons..." under Sections 441.16 and 450.01(6)(c), Wis.Stats. The one hour evaluation cannot be delegated to registered nurses (RNs) or to Nurse Practitioners who are not certified as APNPs.

DSL-BQA-99-063 was in error in the statement that:

The requirement for evaluation within one hour after initiation of restraint or seclusion for patients who have been admitted for treatment of mental illness may also be met by a licensed psychologist who is listed or eligible to be listed in the national register of health services providers in psychology or who is certified by the American board of professional psychology and who has been granted hospital staff privileges to treat patients, in accordance with Section 50.36(3g)(b), Wis. Stats.

Current clarification, as provided by CMS, of 42 CFR 482.13(f)(3)(ii)(C) is that the evaluation must be conducted by a LIP or by a professional delegated by the LIP who is competent to assess the patient's medical needs as well as the patient's psychological status. Therefore, a psychologist may not serve as the LIP for the purpose of meeting the federal requirement for evaluation within one hour of any patient requiring seclusion or restraint.

Questions concerning the content of this memo may be addressed to Lydia Reitman, Nurse Consultant, at (608) 266-7881 or to Helen Brewster, ACSW, at (608) 267-1443.